

Commercial Motor Vehicle Enforcement Quarterly



January 2009

Captain's Corner

Captain Robert R. Powers, Jr.

I am very pleased to announce that Motor Carrier Investigator Cathy Fisher has been selected as the recipient of the 2008 Motor Carrier Officer-of-the Year Award. Investigator Fisher, a 28 year veteran of the Michigan State Police, is currently assigned to the Sixth District Headquarters in Grand Rapids.

Investigator Fisher is the 24th member to receive this prestigious award since it was established in 1985. The annual Motor Carrier Officer-of-the-Year Award, sponsored by the Michigan Trucking Association, recognizes a State Police Commercial Vehicle Enforcement Member who consistently exhibits the highest level of Excellence, Professionalism, Initiative, and Personal Integrity, both on and off the job.

Investigator Fisher, selected from a field of seven nominees will be honored on January 29, 2009 at the Michigan State Police Recognition Ceremony and on February 17, 2009 at the Michigan Truck Safety Symposium.

On January 1, 2009 State Police Commercial Vehicle Enforcement Members began full enforcement of the requirement that all intrastate commercial motor vehicles obtain and display a United States Department of Transportation (USDOT) identification.

2008 Motor Carrier Officer-of-the Year



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INSPECTION**Aspen Inspection Form Issues**

When reporting air brakes out-of-adjustment on the vehicle/driver inspection report only one is listed using **396.3A1BA – as an out-of-service violation (OOS)**. The remaining out-of-adjustment brakes are listed as violations according to FMCSR section 393.47(e).

FMCSR section 393.53(b) requires an additional entry for each CMV having at least one brake out-of-adjustment if the CMV is manufactured on or after October 20, 1994 and is equipped with clamp/roto-chamber air brake systems. This entry is required whether the vehicle is OOS or not.

The 393.53(b) entries are not included when determining the 20% OOS criteria for brake violations.

The following paragraph should be entered on the vehicle inspection report following any 393.53(b) violation. This information is required to advise the driver/company about the foundation brake system violation.

“Simply re-adjusting a self-adjusting brake adjuster, or replacing it, does not guarantee that the problem is corrected. The problem may exist in the foundation brake system. By certifying this inspection report you have indicated that this vehicle now has a properly functioning self-adjusting brake adjustment system.”

Hours-of-Service Rules (Final)

In announcing its final hours-of-service rule, the Federal Motor Carrier Safety Administration confirmed it will keep the 11-hour driving and 34-hour restart provisions.

The final hours of service rule, therefore, will remain unchanged from the “interim” rule the trucking industry has been working under. Truck drivers are limited to driving 11 hours and working no more than 14 hours each day. Drivers are to spend at least 10 hours resting between shifts and cannot operate a truck if they have been on duty more than 60 hours in any consecutive 7 days or having been on duty 70 hours in any period of 8 consecutive days.

GENERAL ENFORCEMENT**Dyed Diesel Fuel Enforcement**

When issuing a citation for a dyed fuel violation, enforcement officers should be utilizing MCL 207.1121 as opposed to MCL 207.1122. MCL 207.1121 imposes the penalty prescribed in Section 207.1136 which is a misdemeanor and set by the court.

When issuing a citation for a dyed fuel violation please make sure the complaint, along with the MC-041, or a copy of the citation, is sent directly to Ms. Leri McClure at the Department of Treasury, Technical Services Division, P.O. Box 30698, Lansing, MI 48909-8198.

VEHICLE CODE**Miscellaneous**

Display of International Registration Plan (IRP) plates may vary from state to state. According to the IRP rules, IRP plates are required to be displayed in accordance with the base jurisdiction’s regulations. This is covered under Section 605 of the IRP Agreement (below), which is signed by each participating State/Province. As such, participating states are required to accept the display of an IRP plate, even if contrary to state law as long as it is consistent with the base jurisdiction’s display requirements.

605 DISPLAY OF REGISTRATION CREDENTIALS; RENEWAL CREDENTIALS

(a) An IRP Plate issued by the Base Jurisdiction shall be affixed to the Apportioned Vehicle for which it has been issued. The display of the plate will be done in accordance with the law of the Base Jurisdiction.

Act 300**Registration/CDL Expiration Dates (Weekend & Holiday extensions)**

Section 8.6 of the MCLA states when a statute (e.g., driver licenses and registration plates) sets an expiration date, if that date falls on Saturday, Sunday or legally recognized holiday, the expiration is extended to the next business day.

A registration plate does not legally expire until 12:01 am on the day following the expiration date. In addition, there is no provision in Act 300 to place vehicles with expired plates “out-of-service.”

While continued operation is illegal, generally there is no provision for an officer to hold a vehicle simply because the plates are expired. However, Section 257.255(3) does provide for the impoundment of vehicles for failing to pay IRP fees. Per SOS, this provision should only be used when LEIN reports an IRP registration plate is suspended, cancelled, etc., and not merely expired.

Vision Obstructions MCL 257.709

An earlier US Court of Appeals decision in the *US v. Davis* effectively eliminated the ability to enforce MCL 257.709(1)(c), obstructed vision due to a dangling ornament or other suspended object. The court determined that the statute MCL 257.709(1)(c), as currently written, is unconstitutionally vague because it offers no guidelines for police or drivers to determine when a dangling ornament obstructs the driver's vision and when it doesn't.

On December 31, 2008, the court withdrew its decision in this case. While no reason was given by the court for the withdrawal, the most likely reason is that the decision violated a federal law requiring the courts to give proper notice to states when they determine that a law is unconstitutional (see below). Thanks to Ken Stecker, Prosecuting Attorneys Association of Michigan, and to John Livesay, City Attorney for Port Huron, for their insights.

28 U.S.C. § 2403(b)

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality. It is likely that the court will ultimately issue a new ruling consistent with their initial decision. With any luck, the legislature will pass cleanup language quickly. In the meantime, consult your prosecutor or city attorney before taking enforcement action on 709(1)(c). As before, the other sections of MCL 257.709 are not affected by the decision. Feel free to contact me if you need additional information.

SIZE AND WEIGHT

Snow Removal Permits

MDOT will be issuing a permit for some front end loaders to be used as snow removal equipment. These permits will require a rear escort vehicle, must have rotating lights, may not be used on the freeways and will be specific to a particular community. The construction permit issued to such equipment does not allow them to be used for snow removal.



Some of the construction equipment/vehicles being used for snow removal, appears to be primarily in Sault Ste Marie, are 12' wide. MDOT is permitting this equipment and requiring an escort car as well as flashing lights on the equipment. The equipment was permitted for a maximum of 11', however, MDOT will be permitting the 12' equipment with the same provisions as described above. Additionally, this will be the only year they will permit 12' wide construction equipment for snow removal purposes. MDOT advised that the equipment will have to be reduced to 11' wide for next year's snow removal. Because the snow season is already underway and clearing the roads is a priority, the equipment will be permitted for 12'.